

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:)	
)	
OZARK RESTAURANT GROUP, INC.,)	CASE NO. BK09-62263 (W.D. Mo.)
Debtor(s).)	
<u>U.S. FOODSERVICE, INC.,</u>)	A09-8064-TJM
)	
Plaintiff,)	8:09CV254
)	
vs.)	CH. 11
)	
DONALD ROLF; MICHAEL ROLF; and)	
OZARK RESTAURANT GROUP, INC.,)	
Defendants.)	

REPORT & RECOMMENDATION

This matter is before the court on the plaintiff's status report (Fil. #3).

The plaintiff filed the underlying complaint against the defendants in the United States District Court for the District of Nebraska on July 28, 2009, to recover payment for goods sold on account to the corporate entity and guaranteed by the individual defendants. On September 30, 2009, the corporate defendant filed a Chapter 11 bankruptcy petition in the Western District of Missouri, which stayed all proceedings against it and resulted in the referral of this lawsuit to this court.

The automatic stay of 11 U.S.C. § 362 protects the debtor from any attempts to collect a debt from it, but the individual defendants are not subject to the same protection. Therefore, I respectfully recommend to the United States District Court for the District of Nebraska that it withdraw the reference of this adversary proceeding to proceed with the litigation against the non-debtor defendants, while staying the case as to the party in bankruptcy until the automatic stay is no longer in effect or until relief from the automatic stay is requested and obtained from the bankruptcy court.

The Clerk of the Bankruptcy Court shall process this recommendation pursuant to the local court rules.

DATED: November 25, 2009

RESPECTFULLY SUBMITTED,

/s/ Timothy J. Mahoney

United States Bankruptcy Judge

Notice given by the Court to:

Patrick D. Pepper
Robert P. Diederich
John C. Hahn
U.S. Trustee